IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8498 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE JAYANT PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

KHAKHKHAR HINABEN DILIPBHAI

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 8498 of 2002

MR GM JOSHI for Petitioner No. 1

MS MANISHA LAVKUMAR, Ld. AGP for Respondent No. 1

NOTICE SERVED for Respondent No. 2

CORAM : MR.JUSTICE JAYANT PATEL

Date of decision: 19/09/2002

ORAL JUDGEMENT

1. Rule. Ms.Manisha Lavkumar, learned AGP waives

service of notice of rule on behalf of the respondents.

2. With the consent of the parties, the matter is taken up for final hearing today.

3. The petitioner is physically handicapped girl having post-polio paralysis in both lower limbs, but she is in a position to move freely with the help of walking stick for the physically handicapped persons and she has secured in SSC examinations 70.29% In 12th (HSC) standard. The petitioner has secured 74.14% of marks and, therefore, it can easily be said that the petitioner is having a distinct educational career and inspite of the physical handicapness she has stood by the merit.

4. The petitioner applied for admission to PTC Course in the category of physically handicapped persons, which is a reserved category. The State Government has reserved 3% seats for physically handicapped persons. The State Government has passed a resolution dated 10-7-2001, whereby it has been resolved that out of the three categories, if any of the physical disability is coming in the way of the student concerned during the study, then he/she can be excluded and the balance seat can be filled up by other students from same categories. The resolution dated 10-7-2001 is made available to the Court for the perusal.

5. It has also been submitted that on behalf of the respondents that the Director, Primary Education has issued order dated 27-6-2001, whereby it is said that the physically handicapped person will have to remain present before the Committee and the Committee shall assess the suitability of the candidate for the purpose of PTC Course in as much as whether the physical disability is such which would come against the student concerned. The petitioner is not considered in the reserved category on the ground of unsuitability. It appears that the petitioner has fairly good chance of getting admission, if she enters the zone of consideration in the category physical handicapped persons on the basis of marks obtained by hear on 12th (HSC) standard.

6. This Court had considered the scope and ambit of resolution dated 10-7-2001 in the decision dated 28-8-2002 in SCA No.7052/2002 and had observed at para 7 and 8 as under:

"7. It is true that normally this Court, while exercising power under Article 226 of the Constitution of India, would not interfere in a

matter of policy decision of a State Government, unless the said policy decision is so perverse or arbitrary on the face of it. It is not a blanket proposition that the Court will not have any judicial review in a matter of policy decision. The policy decisions of the Government are also subject to the judicial review. It is true that the scope of judicial review in a matter of policy decision is very limited, but there are catena of decisions and it is well settled that if the policy is so obsolete or if the action of forming policy is on the face of it unreasonable, then the Court would interfere even in exercise of power under Article 226 of the Constitution of India. Keeping the said aspect in mind, the matter will have to be examined.

8. The perusal of the resolution dated 10-7-2001 shows that the Government has made reservation of 3% of the seats for physically handicapped persons. However, it has also been stated in the said resolution that if the physical disability or handicapness is such which creates any obstacle or comes in the way of educational activities of the students, then the seats can be allocated to other physically handicapped persons. Therefore, the resolution dated 10-7-2001 upon which reliance is placed is pertaining to the education activities of the students and it cannot be stretched to the extent that after the study also the person is to face difficulty in imparting education and hence he or she should be kept out of such reservations even while study. So far as the petitioner is concerned, with 50% visibility and one eye functioning, she has been successfully able to study upto 12th Standard and she has scored 74.33% as mentioned earlier. Therefore, by no stretch of imagination it can be said that the petitioner will have any difficulty whatsoever in studying PTC course, nor can it be said that the physical handicapness of 50% visibility would come in the way of petitioner in studying PTC course."

7. It is true that in the aforesaid matter the disability was to the extent of 50% since the candidate concerned had one eye. In the present case, the candidate is having the mobility with the stick. Considering the fact that the disability is such and inspite of that disability, the petitioner has secured

74.17% in HSC examinations, by no strech of imagination it can be said that the same would come against the petitioner in undergoing PTC course. The learned AGP for the respondents wanted to contend that the syllabus and method of study of PTC course is such that the student should have a free movement and the student is also required to write on the board while learning and the concerned student may also be required to visit outside the campus for the purpose of training and for the purpose of study and, therefore, it has been submitted that the disability is such which would come against the petitioner for the purpose of undergoing PTC course. It appears that when the petitioner has free movements with the stick for handicapped persons, there is no reason why such persons should not be encouraged by the State Government for the purpose of seeing that they can undergo better studies and in future in life they can be independent of their own after getting employment. With a view to see that such encouragement is given to these type of handicapped students, the Act of 1995 is enacted by the Parliament. I am of the view that the student has, inspite of physical disability, successfully studied upto 12th Standard and has secured a distinctive educational career, it cannot be said that the physical disability of the petitioner is such which would come in the way for the purpose of undergoing PTC course. I am of the view that no rational goal would be achieved therefrom if such persons are deprived of from the opportunities in life. As a matter of fact, giving opportunity to this type of physically handicapped persons and more particularly those who are even otherwise meritorious would be rather in the public interest and in the interest of physically handicapped persons for which the policy is also accepted by all the State Governments to encourage. I do not find it proper not to discuss further since the issue was incidentally discussed in the judgement dated 28-8-2002 by this Court in SCA No.7052/2002. Moreover, there is no cogent or any reliable material shown to this Court, which was considered by the authority to find that petitioner's handicapness would hamper education.

8. In view of the above and more particularly in view of the fact that one seat is already available, I find it proper to give directions to the authority to consider the case of the petitioner in the reserved category of physically handicapped persons for the grant of admission to PTC course and if such direction is given, I am of the view that no prejudice will be caused to anyone. Therefore, it is directed that the respondent authorities shall consider the case of the petitioner for

grant of admission in the category of physically handicapped persons, on the basis of inter se merit. The petition is allowed to the aforesaid extent. Rule is made absolute accordingly. There shall be no order as to costs. D S Today.

19-9-2002 (Jayant Patel, J.)

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